

United States Senate

WASHINGTON, DC 20510

April 21, 2020

Administrator Andrew Wheeler
Office of the Administrator 1101A
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Wheeler:

On this 50th anniversary of Earth Day, the COVID-19 pandemic presents the nation with an extraordinary health and economic challenge. This crisis has left no state untouched, including our own state of Michigan, yet it is disproportionately harming people in low-income areas, communities of color, and indigenous populations. Glaringly, despite comprising only 13.8 percent of the population of Michigan residents, African Americans currently account for 35 percent of the confirmed cases of COVID-19 and 40 percent of deaths from the pandemic. That's why we write to express our concerns about the environmental justice implications of several recent Environmental Protection Agency (EPA) policy and operational actions. We additionally request information to understand whether EPA leadership has fully considered the harsh impacts these actions will have on disadvantaged communities and people in Michigan.

Minority and low-income populations have for decades been exposed to greater levels of pollution. Air pollution is one of the primary causes of underlying heart and lung problems, and recent science is suggesting that people with these underlying health problems are also – unsurprisingly - more vulnerable to COVID-19. In Michigan, as we witness the ravages of this pandemic, minority and low income populations are once again bearing disproportionate burdens of our systemic environmental health failures.

We are concerned that EPA's actions on several recent National Ambient Air Quality (NAAQ) standards fail to meet the Clean Air Act's requirement that these standards be established at a level to protect public health, *including the health of at-risk populations, and with an adequate margin of safety*. For instance, EPA's recent proposal to maintain existing NAAQ particulate matter levels was inconsistent with the advice of the agency's own career air experts. It further ignored the agency's own research that African Americans and other people of color tend to live in closer proximity to coal plants, refineries, and other sites that emit particulate matter, and that particulate matter, which passes through the lungs and then enters the bloodstream, causes a variety of serious health problems, including cardiovascular and pulmonary disease. Similarly, EPA recently decided to leave unchanged the existing NAAQ standards for ground-level ozone, though there is ample science demonstrating the current level does not adequately protect children with asthma. Finally, EPA's April 16th decision that mercury and air toxic standards are no longer 'appropriate and necessary' to protect health dangerously removes protections that have prevented up to 11,000 premature deaths each year. Mercury is a harmful neurotoxin, one of the most persistent chemicals in the Great Lakes, and it disproportionately affects people living near power plants, as well as those who routinely depend on fish caught in state for food. Each of these decisions by EPA will have real and harmful consequences for the people of Michigan.

Exacerbating our constituents' concerns with these and other recent regulatory decisions, on March 26, 2020 the EPA issued guidance that states the agency will not seek penalties for violations of routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification obligations, if the cause of the noncompliance is due to COVID-19. A recent report by the Environmental Law and Policy Center documented a significant increase in facilities across Region 5 in noncompliance with the Clean Water Act in 2019, compared with the average number of facilities for FY 2012-2017. We appreciate that COVID-19 is a public health emergency warranting leadership flexibility to enable regulated entities to adequately adapt, function and operate in a manner that best protects worker safety. However, by providing no intended end date, and without requiring notice of noncompliance by regulated entities, we are concerned the agency has accorded too much discretion to stakeholders to decide for themselves whether they are complying with pollution limits and health standards. We urge EPA to more narrowly tailor the guidance, and to recommend best practices to regulated entities where possible in order to prevent unnecessary gaps in complying with public health and environmental standards.

Michigan communities rely on EPA to provide the necessary environmental regulatory oversight and action to protect both public health and the environment. We must ensure that pollution limits and environmental safeguards are in place and enforced in order to protect everyone, including populations that are on the front-line of environmental pollution and burdened by underlying health challenges. The devastation that COVID-19 is currently bringing to already vulnerable communities and people reinforces our sense that we must do more to help ensure that our national environmental policies are adequately protective of their needs.

We respectfully ask for EPA's responses to the following:

1. What environmental justice impacts, if any, did the EPA consider and evaluate prior to issuing the NAAQs updates, the Mercury and Air Toxic Standards decision, and the March memorandum to ease regulatory compliance requirements amid COVID-19?
2. How is the EPA working with regulated entities to ensure they continue to reduce their environmental burden on communities, and particularly populations who may be more vulnerable, during the current national public health emergency?
3. How has the EPA communicated its enforcement plans with regulated entities, states, communities and tribes?
4. What other regulatory enforcement contingency plans did the EPA consider prior to issuing its March memorandum? What procedures is the EPA developing or have in place to protect workers to ensure compliance in emergency situations like the one presented by COVID-19?
5. Is the EPA considering or currently conducting any research utilizing the EPA's environmental justice screening and mapping tool, EJSCREEN, to compare socioeconomic and environmental factors to understand the projected risk of severe COVID-19 outcomes?

If yes, can you please provide more detail on who is conducting the research and when the EPA plans to release that information?

6. Will you consider amending your operations guidance to require regulated entities to disclose noncompliance information when such information should be reasonably available to the entity, and will you commit to releasing that information where appropriate to protect public health?

Thank you for your consideration and your response,



Gary C. Peters
United States Senator



Debbie Stabenow
United States Senator